1292.

SUPREME COURT OF THE UNITED STATES.

No. 100.

HENRY CHOUTEAU, PLAINTIFF IN ERROR,

vs.

PATRICK MOLONY.

IN ERROR TO THE DISTICT COURT, UNITED STATES, FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Summons and marshal's return	1	1
Petition	3	2
Exhibit A, referred to in petition	13	5
Do. B, a translation of exhibit A	14	6
Do. H H, referred to in petition	15	6
Translation of exhibit H H	19	8
Exhibit H H, No. 3, referred to in petition	23	9
Do. D, translation of exhibit H H, No. —	28	11
Do. E, referred to in petition	34	13
Do. F, do. do	36	14
Demurrer to petition	39	14
Joinder in demurrer	40	15
Judgment	41	15
Certificates of clerk and judge	42	16
Citation and service	43	16
Copy of bond	45	17
Writ of error	46	17
Assignment of errors	48	18

[GIDEON, Print.]

Pleas before the district court of the United States, within and for the district of Iowa, on the ninth day of January, in the year one thousand eight hundred and fifty-two.

Be it remembered that, heretofore, to wit, on the fourteenth day of October, in the year one thousand eight hundred and fifty-one, Henry Chouteau sued out of the clerk's office of the court aforesaid the following writ of summons in ejectment against Patrick Molony, to wit:

Summons.

[L. S.] THE UNITED STATES OF AMERICA,
District of Iowa, ss.

To the marshal of said district, greeting:

In the name of the President of the United States, we command you to summon Patrick Molony, a citizen of, and resident in, the State of Iowa, if he be found in your bailiwick, to be and appear before the judge of the district court of the United States, for the northern division of the district of Iowa aforesaid, at Dubuque, on the first Monday in the month of January next, to answer unto Henry Chouteau in a plea of ejectment to his damage in the sum of five thousand dollars, as alleged, and have then and there this writ.

Witness the honorable J. J. Dyer, judge of said district court, this 14th day of October, 1851, and in the 76th year of the independence of the United States of America.

Attest: T. S. PARVIN, *Clerk*,
[SEAL.] By J. P. VAN HAGEN,
Deputy clerk.

And afterwards, to wit, on the fifteenth day of October, in the year last aforesaid, the said writ was returned to the court aforesaid by said marshal, endorsed as follows, to wit:

Marshal's return.

"Served the within summons, by reading in the presence of the within named Patrick Molony, on the fifteenth day of October, 1851.

STEPH. B. SHELLEDY,
U. S. marshal for Iowa,
By JESSE M. HARRISON,
Deputy for the northern division."

And afterwards, to wit, on the said fourteenth day of October, in the year last aforesaid, the said Henry Chouteau filed in the clerk's office aforesaid his declaration in ejectment; which, with the consent of the said Patrick Molony, and the order of the court, was subsequently withdrawn, and the following petition substituted therefor, to wit:

Petition.

THE UNITED STATES OF AMERICA,
District of Iowa.

To the district court of the United States, in and for the district of Iowa, January term, 1852, northern division.

HENRY CHOTEAU
vs.
PATRICK MOLONY.

Your petitioner, Henry Chouteau, who is a citizen of the State of Missouri, claims of the defendant, Patrick Molony, who is a citizen of the State of Iowa, the possession of seven undivided eighteenths of the several tracts of land situated in the district of lands subject to sale at Dubuque, in the said northern division, and which are known on the official plats of the surveys made by authority of the Government of the United States as the north fractional half of section six, in township eighty-seven north, of range three east, of the fifth principal meridian; which tract contains three hundred and five acres and fifty-six one-hundredths of an acre, and is worth the sum of seven thousand dollars; also the northeast quarter of the southwest fractional quarter of said section six; which said last mentioned tract contains forty acres, and is worth the sum of one thousand dollars; also the northeast quarter of section twenty-five, in township eighty-eight north, of range two east, of the fifth principal meridian; which said last mentioned tract contains one hundred and sixty acres, and is worth the sum of sixteen hundred dollars; which said lands the said defendant wrongfully withholds from your petitioner.

That said Molony unlawfully took possession of said several tracts of land on the *the* 15th of May, 1847, and has retained possession ever since. Your petitioner admits that said Molony purchased said land from the United States Government, in pursuance of the act of Congress in that case made and provided, and that said Government, on the day and year last aforesaid, caused a regular patent to be issued to said Molony for said several tracts; but your petitioner denies the validity of said patent, in consequence of the said lands having been previously granted to the person under whom plaintiff claims, in manner hereinafter mentioned.

Your petitioner also claims of said defendant the sum of one thousand dollars, as damages for said wrongful withholding of said possession. And for cause of such claims your petitioner states that, on the 22d day of September, A. D. 1788, at Prairie du Chien, in what is now called the State of Wisconsin, Julien Dubuque purchased from the Fox Indians a large tract of land, situated in what is now the Dubuque land district, and in said northern division, which said large tract is contiguous to, and bordering upon, the Mississippi river, and extends from the mouth of the Little Maquoketa river to the mouth of the Musquabinenque creek, which creek is now called Tête des Morts.

That on the day last aforesaid an instrument of writing, in testimony thereof, was executed, a copy of which is hereunto annexed, marked A, which your petitioner prays may be taken and deemed as a part of this his petition. He hereunto annexes a correct translation of said document, marked B, which he prays may be taken and deemed as a part of this his petition. That the said Dubuque delivered to said Fox Indians goods in payment of said country, and on the day on which said document was executed. That a few days after said document was executed the chiefs of the said Fox Indians, in the presence of the said Dubuque, assented to the erection of monuments at the mouth of said Little Makoketa, and at the mouth of said Tête des Morts, as evidence that the former was the upper and the latter the lower end of the Mississippi river boundary line of said large tract, sold as aforesaid by said Foxes to the said Dubuque, and that said monuments were actually erected.

That said Dubuque, from the time of said purchase till the 22d day of October, A. D. 1796, occupied said district of country, sold to him as aforesaid, and made important improvements thereon, consisting of the clearing and preparation of an extensive farm for agricultural purposes, the precise extent of which is unknown to your petitioner, of the erection of a horse-mill, and of houses to dwell in; and that during said interval he cultivated said farm, and dug lead mineral on said land, and smelted the same in a furnace he had caused to be there constructed. That said district of country was situated in the dominion subject to the King of Spain, and constituted a part of what was then known as the Spanish province of Louisiana. That on the 22d day of October, A. D. 1796, at the city of New Orleans, in said province, said Dubuque presented to the Baron de Carondelet, the then acting governor general of said province, his petition for the grant, by the Spanish government, of its interest in said land. That said governor general, on the day and year last aforesaid, ordered the merchant, Don Andrew Todd, to give him information on the nature of said demand; that said Andrew Todd, on the 29th day of October, A. D. 1796, gave to said governor general the information ordered as aforesaid; and that on the 10th day of November, A. D. 1796, at said city of New Orleans, said governor general made his final order, whereby he granted to said Dubuque the interest of the Spanish government in and to said land. Your petitioner hereunto annexes said petition, said order on said Todd for information, the information of said Todd, and the said final order of said Baron de Carondelet, all on the same sheet of paper marked HH, which he prays may be taken and deemed as a part of this his petition, and which, he alleges and insists, was and is a complete Spanish grant, which, on the day the final decree thereon was made, vested in said Dubuque a perfect title to said land described in the said petition of said Dubuque. Your petitioner states that the object mentioned in said petition of said Dubuque as la petite riviere Maquanquitois, is the small river now called the Little Makoketa. Your petitioner hereunto annexes a

correct translation, marked C, of said document HH, which he prays may be taken and deemed as a part of this his petition. That on the 20th day of October, A. D. 1804, at St. Louis, in what is now the State of Missouri, said Dubuque, by deed executed by himself and Auguste Chouteau, in consideration of the sum of ten thousand eight hundred and forty-eight $\frac{6}{100}$ dollars, then paid by said Chouteau to said Dubuque, sold and conveyed to the said Chouteau seventy-two thousand three hundred and twenty-four arpens of land, a part of said tract granted as aforesaid by the governor general, as will more fully appear by reference to said deed hereunto annexed, marked H H, No. 3, which your petitioner prays may be taken and deemed as a part of this his petition. He hereunto annexes a correct translation of said deed, marked D, which he prays may be taken and deemed as a part of this his petition. That on the 20th day of September, A. D. 1806, said grant was decided by the Missouri board of land commissioners, John B. C. Lucas dissenting, to be a complete Spanish grant, made and completed prior to the first day of October, A. D. 1800. That on the 29th day of November, A. D. 1826, said Auguste Chouteau departed this life, and left sundry heirs; that your petitioner, a son and heir of said Auguste Chouteau, has inherited one-sixth of said land conveyed by said Dubuque; that Gabriel Chouteau, another son and heir, inherited one-sixth; and that Louisa, a daughter and heiress of said Auguste, and formerly the wife of Gabriel Paul, inherited one-sixth; that said Louisa and Gabriel are both dead; that Theresa, the wife of George R. Taylor, is daughter and heiress of said Louisa, and as such inherited one-third of the said interest of Louisa in the land conveyed by said Dubuque, as above mentioned. That said Gabriel Chouteau conveyed to this petitioner, on the 9th day of October, A. D. 1851, by his deed duly executed, his interest in said land, which deed is hereunto annexed, marked E, and prayed to be taken and deemed as part of this petition. That on the 11th day of October, A. D. 1851, said George R. Taylor and Theresa L. Taylor conveyed to your petitioner the interest of said Theresa in said land, it being an undivided one-eighteenth part, by their deed duly executed, which is hereunto annexed, marked F, which your petitioner prays may be taken and deemed as part of this his petition. Your petitioner further states that said Dubuque continued to reside on said land granted to him as aforesaid from the year 1788 to the year 1810, when he died; the precise day of his death being unknown to your petitioner. That from the time said Dubuque made said purchase from the Indians, till said province of Louisiana was acquired by the United States by treaty, he the said Dubuque would not permit any one to carry on business on said tract of land, fronting on the Mississippi river, and extending from the mouth of the Little Makoketa to the mouth of the Tête des Morts as aforesaid, unless such person had first obtained the consent of him, the said Dubuque; and that on one occasion, to wit, on the first day of January, A. D. 1796, he caused to be driven forcibly from said land Guêrier who, without such consent, landed goods

there for the purpose of selling the same. That during said interval said Dubuque exercised great influence over the neighboring Indians, as well those on the east as those on the west side of the Mississippi river; and that said Indians, consisting of Winnebagoes on the east side, and of Foxes on the west side of said river, were in the habit of consulting with the said Dubuque, and asking his advice relative to those of their undertakings which they considered important. That when said Dubuque settled on said land, granted to him as aforesaid, he employed as laborers ten white men, nine of whom were Creole Frenchmen, professing the Roman Catholic religion, who removed from Prairie du Chien, a town situated in what is now the State of Wisconsin, to enter into the service of the said Dubuque, and that the white inhabitants who resided on said land consisted almost wholly of persons who before said Dubuque made said settlement were inhabitants of said town of Prairie du Chien, and that an additional number of said inhabitants of Prairie du Chien had removed to said land to enter into the service of the said Dubuque during the interval between the 22d day of September, A. D. 1788, and the 22d day of October, A. D. 1796, and were, on the day last named, together with the survivors of those who first removed as above mentioned, still residing there. That said several tracts, unlawfully possessed by defendant as aforesaid, are parts and parcels of the land conveyed as above mentioned by said Dubuque to said Auguste Chouteau.

Your petitioner therefore prays judgment against the said defendant for said seven undivided eighteenths of said land, and for said sum of five thousand dollars damages, by him sustained as aforesaid.

Attest:

HOGE,
CORNICK,
Attorneys for petitioner.

The exhibit referred to in the petition, and filed therewith, and marked A, is in the words and figures following, to wit:

Exhibit A.—Conveyance from Foxes to Dubuque.

Copie de conseil tenu par Mrs. les Renards, c'est à dire, le chef et le brave de cinque villages avec l'approbation du reste de leur gens, expliqué par Mr. Quinantotaye, deputé par eux, en leur presence et en la notre, nous soussignés, sçavoir, que les Renards permette à Julien Dubuc, appelé par eux la petite nuit, de travailler à la mine jusqu'à qui lui plaira, des s'en retirer sans lui specifier aucun terme; de plus, qu'il lui vende et abandonne toute la côté et contenu de la mine trouve par le femme Peosta, que sans qu'aucuns blancs ni sauvages, ni puissent pretendre sans le consentment du Sr. Julien Dubuc; et si en cas ne trouve rien dedans, il sera mêtre de cherche où bon lui semblera, et de travailler tranquillement, sans qu'aux qu'un ne puisse le nuire, ni portez aucune prejudice dans ses travaux; ainsi nous, chef et brave, par la voie de tous nos villages, nous sommes convenu avec Julien Dubuque, lui vendant et livrant de ce jour d'hui comme il est mentionné ci-dessus,

en presence de François qui nous attende, qui sont les temoins de cette piêce, à la Prairie du Chien, en plein conseil le 22 7br., 1788.

BLONDEAU,
ALA sa x marque. AUSTIN,
AUTAQUE.

BAZIL sa x marque. TEREN, temoin,
BLONDEAU marque x tobague. DE QUIRNEAU,
JOSEPH FONTIGNY, temoin.

The exhibit referred to in the petition, and filed therewith, and marked B, is in the words and figures following, to wit:

Exhibit B.—A translation of A.

Copy of the counsel held by the Foxes, that is to say, of the branch of five villages, with the approbation of the rest of their people, explained by Mr. Quinantotaye, deputed by them in their presence, and in the presence of us, the undersigned, that is to say, the Foxes permit Mr. Julien Dubuque, called by them the Little Cloud, to work at the mine as long as he shall please, and to withdraw from it without specifying any term to him; moreover, that they sell and abandon to him all the coast and the contents of the mine discovered by the wife of Peosta, so that no white man or Indian shall make any pretension to it without the consent of Mr. Julien Dubuque; and in case he shall find nothing within, he shall be free to search wherever he may think proper to do so, and to work peaceably without any one hurting him, or doing him any prejudice in his labors. Thus we, chief and braves, by the voice of all our villages, have agreed with Julien Dubuque, selling and delivering to him this day, as above mentioned, in presence of the Frenchmen who attend us, who are witnesses to this writing.

At the Prairie du Chien, in full counsel, the 22d September, 1788.

BLONDEAU;
ALA AUSTIN, his x mark,
AUTAQUE.

BAZIL TEREN, his x mark,
BLONDEAU marque x tobague. DE QUIRNEAU,
JOSEPH FONTIGNY.
} Witnesses.

The exhibit referred to in the petition, and filed therewith, and marked H H, is in the words and figures following, to wit:

Exhibit H H.—Petition of Dubuc to Carondelet, &c.

A son excellence, le BARON DE CARONDELAIS:

Le tres humble suplyent de votres excellence, nommé Julien Dubuque, aiant faites une abbitation sur les frontier de votres gouverne-

ments, au millieux des peuples sauvages, qu'il sont les âbiteurs du pays a achetée une partye de terre de ces indients avect les mines qu'il quontient, et par sa parsaverances a surmonter tous les optacles tous contenzes que densgerenzes est parvenue approi bien des travences à être paysibles possesseures d'unes partye de terre sur la rives occidentalle du Mississypi, à quil il a donnée le nom des mines d'Espagnes, en mêmoir du gouvernements aqui il appartenais. Comme le lieux de l'abitationt nest qu'un point, et les diferentes mines qu'il travailles sont et parts et à plus de trois lieux de distences les unes des autres, le très humbles supplyant prit votres excellences de vouilloir bient lui accorder la paysibles possessions des mines et des terres, qui ai à dire, depuis les cautes d'eau aux de la petites rivier Maquanquitois jusque au quantes de Mesquabysnanques, ce qu'il formes environt sept lieux sur la rives occidentalle du Mississippye, sur trois lieux de profondeure, que le très humbles supliant *anzes* esperer que vos bontée vousdrats bien lui accorder sa demandes et prit settes même bonti qu'il fait le bonneur de tous de sugaits, de me pardonner mon stille, et de vousloir bient aprouver la pure simplicitée de mon cœur au defaux de mon elloquences. Je prie de ciel de tous mon pouvoir possibles qu'il vous conserves et qu'il vous combles de tous ses bientfait; et je sui et serez toutes ma vie, de votres excellences le très humbles et très auxbeissents, et très soumis servitteur,

J. DUBUQUE.

Order to Todd.

NUEVA ORLEANS, 22 *de October de* 1796.

Informe el comerciante Dn. Andres Todd, sobre la naturaleza de esta demanda. EL BARON DE CARONDELET.

Informa:ion of Todd.

S'OR GOB'OR: Compliendo con el superior decreto de V. S. en que me manda informar sobre la solicitud del individuo interesado en el antecedente memorial, debo decir, que en quanto á la tierra que pide, nada se me ofrece, en que V. S. se la conceda, si lo halla por conveniente, con la condicion sin embargo de observara el concesionario lo prevenido por S. M. acerca de la treta con los Indios, y que esta se le prohibira absolutamente á menos que notenga mi consentimiento por escrito.

Na. Orleans, 29 de Octubre de 1796. ANDREW TODD.

Order of Carondelet to Dubuc.

NUEVA ORLEANS, *de Noviembre de* 1796.

Concedido como se solicita baxo las restricciones que el comerciante Dn. Andres Todd expresa en su informe.

EL BARON DE CARONDELET.

Certificate that H H is a true copy of the original paper withdrawn by plaintiff, by leave of court.

The foregoing two pages have been prepared by me in pursuance of an order of court to that effect, and is a true copy of Dubuque's petition, the interlocutory orders of the Baron de Carondelet and Andrew Todd, and the final order of the Baron de Carondelet.

Witness my hand, this 9th Jan., 1852. T. S. PARVIN, *Clerk*.

The exhibit referred to in the petition, and filed therewith, and marked C, is in the figures and words following, to wit:

Translation of H H.

To his excellency the BARON DE CARONDELET:

Your excellency's very humble petitioner, named Julien Dubuque, having made a settlement on the frontiers of your government, in the midst of the Indian nations, who are the inhabitants of the country, has bought a tract of land from these Indians, with the mines it contains, and by his perseverance has surmounted all the obstacles, as expansive as they were dangerous, and, after many voyages, has come to be the peaceable possessor of a tract of land on the western bank of the Mississippi, to which [tract] he has given the name of the "Mines of Spain," in memory of the government to which he belonged. As the place of settlement is but a point, and the different mines which he works are apart, and at a distance of more than three leagues from each other, the very humble petitioner prays your excellency to have the goodness to assure him the quiet enjoyment of the mines and lands, that is to say, from the margin of the waters of the little river Maquanquitois to the margin of the Mesquabysnonques, which forms about seven leagues on the west bank of the Mississippi, by three leagues in depth, and to grant him the full proprietorship thereof, which the very humble petitioner ventures to hope that your goodness will be pleased to grant him his request. I beseech that same goodness which makes the happiness of so many subjects, to pardon me my style, and be pleased to accept the pure simplicity of my heart in default of my eloquence. I pray Heaven, with all my power, that it preserve you, and that it load you with all its benefits; and I am, and shall be all my life, your excellency's very humble, and very obedient, and very submissive servant. J. DUBUQUE.

NEW ORLEANS, *October* 22, 1796.

Let information be given by the merchant, Don Andrew Todd, on the nature of this demand.

THE BARON DE CARONDELET.

SENOR GOVERNOR: In compliance with your superior order, in which you command me to give information on the solicitation of the individual interested in the foregoing memorial, I have to say, that as to the land for which he asks, nothing occurs to me why it should not be granted, if you deem it advisable to do so; with the condition, nevertheless, that the grantee shall observe the provisions of his Majesty relating to the trade with the Indians; and that this be absolutely prohibited to him, unless he shall have my consent in writing.

New Orleans, October 29, 1796. ANDREW TODD.

NEW ORLEANS, *November* 10, 1796.

Granted, as asked, under the restrictions expressed in the information given by the merchant, Don Andrew Todd.

THE BARON DE CARONDELET.

The exhibit referred to in the petition, and filed therewith, and marked H H, No. 3, is in the words and figures following, to wit:

Exhibit HH, No. 3. Deed of Dubuque to Chouteau.

A tous ceux qui les présentes lettres venont, salut, savoir faisons que nous Julien Dubuque, minéralogiste résidante à le Mine d'Espagne, et actuellement en la ville de St. Louis des Illinois, d'une part; et Auguste Chouteau, négociant domicilié en cette dite ville de St. Louis, d'autre part.

Sommes convenus et accordés de notre proper mouvement et volonté, en présence des témoins cy-après nommés de ce qui suit, savoir. Que moi, Julien Dubuc, par les mêmes présentes reconnais et confesse avoir ce jourd'hui vendu, cédé quitté, et transporté, dès maintenant et à toujours, et promets garantir de tous troubles, dettes, douaires, hypotéques, evictions, substitutions, et autre empechement généralement quelconques, au Sieur Auguste Chouteau, négociant susdit ici présent et acceptant, acquereur, pour lui, ses hoirs ou ayant causes, savoir. Une terre contenant soixante douze mille trois cent vingt-quatre arpens de terre en superficie, à prendre au sud d'une concession obtenue par moi dit Dubuc de Mr. Sr. Baron de Carondelet, ainsi qu'il est spécifié par le decrèt en ce dernier datte à la Nouvelle Orléans, le dix Novembre de mil sept cent quatre-vingt-seize, placé au bas de la requête par moi présenté au dit Sr. Baron de Carondelet, et dont la dite requête et decrèt cy-dessus mentionné, ont été en registré au registre de Sr. Antoine Soulard, arpenteur du territoire en la Louisiane; la susdite concession contenant environs sept lieues front au Mississipy, sur trois lieues en profondeur, à commencer depuis les côtés d'en haut en la petite rivière Maquanquetois, dans l'endroit où elle arrive au fleuve Mississipy, jusqu'aux côtés Meyquabinongue dans l'endroit où elle arrive également au dit fleuve Mississipy. Les soixante douze mille trois cent vingt-quatre arpens de terre, vendu par moi susdit Dubuc au dit Sieur Auguste Chouteau, seront limités et pris à commencer de la partie sud de ma dite concession à la côté Meyquabinongue sur trois lieues de profondeur, et remontant le fleuve au nord jusqu'au parfait complit des dits soixante-douze mille trois cent vingt-quatre arpens, et comme un établissement par moi formé, et que j'occupe aujourd'hui, le trouverait englobé dans les dits soixante-douze mille trois cent vingt-quatre arpens de terre cy-dessus mentionnés et vendu, je me réserve par les mêmes présentes la juste quantité en quarante deux arpens front au Mississipy, sur quatre-vingt-quatre en profondeur au dit endroit de mon susdit établissement, ou comme cette même quantité de quarante-deux arpens de front sur quatre-vingt-quatre de profondeur se trouverait alors de moine, pour completer les dits soixante-douze mille trois cent vingt-quatre arpens cy-dessus par moi vendu au dit Sr. Auguste Chouteau, moi susdit Dubuc je m'oblige par les mêmes présentes de faire livrer les dits quarante deux arpens sur quatre-vingt-quatre en profondeur dans un autre endroit de ma susdit concession, dont les dits quarante-

deux arpens feront front au fleuve Mississipy, et les quatre-vingt-quatre seront en profondeur.

Nous susdits Dubuc et Chouteau convenons et accordons, de notre propre mouvement et volonté, d'avoir chaun en particulier pleine et entière jouissance des dits soixante-douze mille trois cent vingt-quatre arpens de terre, cy-dessus mentionnés, tant pour les mines que pour la culture de la dite terre cy-dessus vendue par moi dit Dubuc, et acquise par moi susdit Chouteau, excepté neanmoins que moi dit Dubuc n'aura la dite jouissance que pendant ma vie durante, m'obligeant de me vendre, transporter, ni alliéner, la dite jouissance à qui que ce soit, sous peine de toute nullité au dit droit d'exploitations des mines et culture de la dite terre par moi cy-dessus vendue, et en faveur de la dite jouissance d'exploitations des mines et culture à moi accordé par le dit Sr. Chouteau, pour et pendant ma vie durante; tous les travaux, fourneaux, bâtimens, défrichemens, &c., par moi fait sur la dite terre resteront au dit Sieur Chouteau, après le dit terme cy-dessus mentionnés de ma vie durante, âfin que le dit Chouteau, ses hoirs, au ayant causes, en entre en pleine et paisible possession et en jouissance comme de chose à lui appartenante après mon decès.

Cette présente vente faite par moi Dubuc pour le prix et somme de dix mille huit cent quarante-huit piastres et soixante sols, que par les présentes je reconnais avoir reçu comptant des mains du dit Sr. Auguste Chouteau, et dont par les mêmes présentes je lui donne pleine et entière quittance et décharge, voulant en faveur du susdit payement que le dit Sr. Chouteau entre en pleine et paisible possession du susdit terrein des ce jourd'hui, et en jouisse lui, ses hoirs ou ayant causes, comme de chose à lui appartenante, me demittant et desaisisant de la susdite quantité de soixante-douze mille trois cent vingt-quatre arpens de terre cy-dessus mentionné en faveur du susdit payement de la somme de dix mille huit cent quarante-huit piastres et soixante sols, par moi reçu des mains du dit Sieur Chouteau, et sans que mes héritiers, exécuteurs, ou administrateurs puissent en aucune manière rappeller de tout ce qui est cy-dessus mentionnés et stipulés. Car ainsi a été convenu et accordé, promettant, etc., obligeant, etc., renonçant, &c.

Fait et passé en la ville de St. Louis de Illinois, le vingt Octobre, de mil huit cent quatre et la vingt-neuvième année de l'indépendence Americaine.

En foi de quoi nous susdit Dubuque et Chouteau, avons signés les présentes en présence des Sieurs Marie Philippe Leduc, greffin, Bernard Pratte, et Manuel Gonzalez Moro, et aussi apposé notre sceau le jour et an que dessus.

Les mots 'réciproquement et' de la vingt-trois et vingt-quatrième lignes rayés nuls.

AUGUSTE CHOUTEAU, [L. S.]
J. DUBUQUE, [L. S.]
M. P. LEDUC,
MANUEL GONZALEZ MORO,
BERNARD PRATTE.

DISTRICT OF ST. LOUIS, *ss.*

Before Charles Gratiot, chief judge of the court of common pleas of the district aforesaid, come Julien Dubuque and Auguste Chouteau, and acknowledged the above to be their act and deed.

In witness whereof I have hereunto set my hand and seal, the fifteenth of November, one thousand eight hundred and four.

CHARLES GRATIOT. [L. S.]

Recorded in book A, pages eleven, twelve, thirteen, and fourteen, the third of December, one thousand eight hundred and four.

M. P. LEDUC, *Recorder.*

DISTRICT OF ST. CHARLES.

Recorded in book A, pages twelve, thirteen, fourteen, fifteen, and sixteen, the twenty-seventh day of December, one thousand eight hundred and four.

P. PROVINCHER,
Recorder.

25th Nov., 1851. Delivered to the attorney of Henry Chouteau, esq., of St. Louis.

ADOLPHE RENARD,
Recorder, L. T.

The exhibit referred to in the petition, and filed therewith, and marked D, is in the words and figures following, to wit:

Exhibit D.—Translation of HH, No. 3.

To all who these presents shall see, greeting:

Be it known, that we, Julien Dubuque, mineralogist, a resident of the Mine d'Espagne, and at present in the town of Saint Louis of Illinois, of the one part, and Auguste Chouteau, a merchant, residing in this said town of St. Louis, of the other part, have of our own motion and will, in the presence of the witnesses here below named, covenanted and agreed upon what follows, to wit: That I, Julien Dubuque, by these same presents, acknowledge and confess to have on this day sold, ceded, quit-claimed, and conveyed, now and forever, and promise to defend from all troubles, debts, dowers, mortgages, evictions, substitutions, and other impediments whatever, unto the above said Auguste Chouteau, merchant, here present and accepting, who acquires for him, his heirs or assigns, to wit, a tract of land containing seventy-two thousand three hundred and twenty-four arpens, in superficie, to be taken at the south part of a grant obtained by me, the said Dubuc, from the Baron de Carondelet, as is detailed in his decree, dated at New Orleans, on the tenth day of November, of seventeen hundred and ninety-six, and written at the bottom of the memorial which I presented to the said Baron de Carondelet; said petition and decree above mentioned having been

registered in the book kept by Mr. Soulard, surveyor of the Territory of Louisiana. The aforesaid grant containing about seven leagues front on the Mississippi river, by three leagues deep, to begin at the margin on the upper side of the little river Maquanquitois, at the place where it empties into the Mississippi river, and to end at the Mesquabinonque margin, at the place where it empties into the said Mississippi river. The seventy-two thousand three hundred and twenty-four arpens of land thus sold by me, the said Dubuque, to the said Auguste Chouteau, shall be taken and limited as follows: To begin at the south part of my said grant, at the Mesquabinonque coast, by three leagues in depth, and to ascend the river Mississippi northward, until the completion of the said seventy-two thousand three hundred and twenty-four arpens; and as an establishment made by me, and which I am now occupying, would be included within the said seventy-two thousand three hundred and twenty-four arpens of land here above mentioned and sold, I reserve for myself, by these presents, the exact quantity of forty-two arpens front on the Mississippi river, by eighty-four in depth, at the said place of my aforesaid establishment; and inasmuch as the same quantity of forty-two arpens front by eighty-four deep would not complete the said amount sold, I, the aforesaid Dubuque, in order to complete the said seventy-two thousand three hundred and twenty-four arpens by me sold to the said Auguste Chouteau, do bind myself by these presents to deliver the said forty-two arpens [front] by eighty-four deep, in another place of my said grant, which shall be forty-two arpens in front and eighty-four in depth. We, the aforesaid Dubuc and Chouteau, covenant and agree, of our own motion and will, to have each one in particular the full and entire enjoyment of the said seventy-two thousand three hundred and twenty-four arpens of land above mentioned, as well for the working of the mines as the cultivation of the lands above sold by me, the said Dubuc, and acquired by me, the said Chouteau; excepting however, that I, the said Dubuc, shall have the said enjoyment during my lifetime only, binding myself not to sell, convey, or alienate the said grant to any one whomsoever, under the penalty of the nullity of the right to work the mines and cultivate the lands by me sold as aforesaid; and in consideration of the said enjoyment to work the mines and cultivate the lands thus granted to me by the said Chouteau during my lifetime, all the works, furnaces, buildings, clearings, &c., by me made on the said land, shall belong to the said Chouteau after the above mentioned term of my lifetime, in order that the said Chouteau, his heirs or assigns, have the full and quiet enjoyment thereof, and enjoy the same after my demise, as a thing to him or them belonging. This present sale made by me, the Dubuc, for the price and sum of ten thousand eight hundred and forty-eight dollars and sixty cents, which, by these presents, I do acknowledge to have received in cash from the hands of the said Auguste Chouteau, and for which, by these same presents, I do give him full and entire acquittance and discharge, it being my will that, on account of the said payment, the said Chouteau shall have the full and quiet enjoyment of the said

tract of land from this day, and he and his heirs or assigns enjoy the same as a thing to him or them belonging, divesting myself of the above said quantity of seventy-two thousand three hundred and twenty-four arpens of land above mentioned, in consideration of the above mentioned payment of ten thousand eight hundred and forty-eight dollars and sixty cents, received by me from the hands of the said Chouteau, forbidding my heirs, executors, or administrators to appeal in any manner whatever from all that which is here before mentioned and stipulated, for thus it has been covenanted and agreed upon; promising, &c., binding, &c., renouncing, &c.

Done and executed in the town of St. Louis of Illinois, the twentieth of October, in the year eighteen hundred and four, and the twenty-ninth of the American independence.

In faith whereof we, said Dubuc and Chouteau, have signed these presents in the presence of Messrs. Marie Phillippe Leduc, recorder, Bernard Pratte, and Manuel Gonzales Moro, and also affixed our seals the day and year as above.

The words reciproquement et, of the twenty-third and twenty-fourth lines, are run over as being null.

J. DUBUQUE, [SEAL.]
AUGUSTE CHOUTEAU. [SEAL.]

M. P. LEDUC,
BERNARD PRATTE,
MANUEL GONZALES MORO.

The exhibit referred to in the petition, and filed therewith, and marked E, is in the words and figures following, to wit:

Exhibit E.—Deed. Gabriel to Henry Chouteau.

This deed, made the ninth day of October, eighteen hundred and fifty-one, by and between Gabriel S. Chouteau of the city of Saint Louis, and State of Missouri, party of the first part, and Henry Chouteau, of the same place, party of the second part, witnesseth: That said party of the first part, for and in consideration of the sum of ten thousand dollars, to him paid by the said party of the second part, the receipt of which is hereby acknowledged, does, by these presents, bargain, sell, and convey, unto the said party of the second part, all his right, title, and interest in and to that part of the tract of land in the State of Iowa, and fronting on the Mississippi river, from the mouth of the Little Makoketa river to the mouth of the Tête des Morts creek, by a depth of three leagues, which Julien Dubuque conveyed to Auguste Chouteau by his deed dated the twentieth day of October, eight[een] hundred and four, the part thus conveyed to Auguste Chouteau being seventy-two thousand three hundred and twenty-four arpens from the lower end of said tract; to have and to hold the above described premises unto the said party of the second part and to his heirs and assigns forever.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first aforesaid.

GABRIEL S. CHOUTEAU. [SEAL.]

Executed in presence of—JOHN R. SHEPLEY.

The exhibit referred to in the petition, and filed therewith, and marked F, is in the words and figures following, to wit:

Exhibit F.—Deed. Taylor to Chouteau.

This deed, made this eleventh day of October, eighteen hundred and fifty-one, by and between George R. Taylor and Theresa, his wife, of the city of St. Louis, and State of Missouri, of the first part, and Henry Chouteau, of the same place, party of the second part, witnesseth: That said party of the first part, for and in consideration of the sum of four thousand dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, bargain, sell, and convey, unto the said party of the second part, all their right, title, and interest in and to that part of the tract of land in the State of Iowa, and fronting on the Mississippi river, from the mouth of the Little Makoketa river to the mouth of the Tête des Morts creek, by a depth of three leagues, which Julien Dubuque conveyed to Auguste Chouteau by his deed dated the twentieth day of October, eighteen hundred and four; the part thus conveyed to Auguste Chouteau being seventy-two thousand three hundred and twenty-four arpens from the lower end of said tract; to have and to hold the above described premises unto the said party of the second part, and to his heirs and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals, the day and year first aforesaid.

G. R. TAYLOR, [SEAL.]
THERESA L. TAYLOR. [SEAL.]

And afterwards, to wit, on the 9th day of January, A. D. 1852, the said Patrick Molony filed in the office of the clerk aforesaid a demurrer to said petition, in the words and figures following, to wit:

Demurrer.

The United States of America, district court of the United States, district of Iowa, northern division. January term, 1852.

HENRY CHOUTEAU
vs.
PATRICK MOLONY.

The said defendant says, that the said petition is insufficient in law, and shows the following causes of demurrer, to wit:

1st. That admitting all the facts stated in the petition to be true, the plaintiff is not entitled to recover.

2d. That, as appears by the exhibits to said petition, the plaintiff claims under an unconfirmed Spanish title, which has no standing in a court of law.

3d. That it appears, from the plaintiff's own showing, that he rests his title on an incomplete Spanish grant, and that defendant is in possession under a complete title from the United States.

THOMAS S. WILSON and
PLATT SMITH,
Att'ys for deft.

Joinder.

The petitioner joins in demurrer.

J. P. HOGE,
T. R. CORNICK,
Att'ys for petitioner.

And afterwards, to wit, on the day and year last aforesaid, came the said Henry Chouteau, by his attorney, T. R. Cornick, esq., and on his motion, and with defendant's consent, it is

Ordered, That leave be granted to plaintiff to withdraw his declaration, and substitute therefor a petition under the practice as regulated by the code of Iowa.

It is further, upon consent of parties,

Ordered, That plaintiff have leave to withdraw an original paper, (Dubuc's petition to the Baron de Carondelet,) and substitute in its place a copy thereof.

Thereupon came the defendant, by Wilson and Smith, his attorneys, and filed his demurrer, as above, to the plaintiff's petition.

And afterwards this cause came on to be heard upon the demurrer of the said Patrick Molony to the petition of the said Henry Chouteau. And the court being fully advised in the premises, is of opinion that the said petition, and the matters therein contained, are not sufficient in law to maintain the action of the said Henry Chouteau against the said Patrick Molony; and the said plaintiff declining to amend, but standing by his petition:

Judgment.

It is therefore considered that the said Patrick Molony go hence without day, and recover of the said Henry Chouteau his costs in this behalf expended, taxed to eighty-five dollars and fifty cents.

THE UNITED STATES OF AMERICA,
District of Iowa, ss.

I, T. S. Parvin, clerk of the United States district court, within and

for the district aforesaid, do certify, that the foregoing is truly taken and copied from the records of the proceedings of the district court of the United States, within and for the district of Iowa.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Dubuque, in the northern [SEAL.] division of said district, this tenth day of March, A. D. 1852.

T. S. PARVIN, *Clerk*.

I, J. J. Dyer, judge of said court, within and for said district, do certify, that T. S. Parvin is clerk of said court, and that his attestation aforesaid is in due form of law, and that to all acts by him so done full faith and credit are due.

Dated at Dubuque, this 22d day of March, A. D. 1852.

J. J. DYER,
Judge U. S. D. C. for district of Iowa.

The United States of America, to Patrick Molony, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, within and for the district of Iowa, wherein Henry Chouteau is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, associate justice of the Supreme Court of the United States, this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-two.

JNO. CATRON,
Associate Justice Supreme Court U. S.

On this ninth day of June, in the year of our Lord one thousand eight hundred and fifty-two, personally appeared J. M. Harrison, deputy U. S. marshal for the northern division, district of Iowa, before me, the subscriber, clerk of the U. S. district court for the northern division of district of Iowa, and makes oath that he delivered a true copy of the within citation to Patrick Molony.

JESS. M. HARRISON,
Deputy U. S. marshal for the northern division of district of Iowa.

Witness my hand and the seal of the said court, hereunto affixed at Dubuque, this ninth day of June, A. D. 1852.

T. S. PARVIN, *Clerk*,
Per ALEX. D. ANDERSON, *Deputy*.

Served the within citation by leaving a copy at the residence of the within named Patrick Molony, June the 5th, 1852.

STEPHEN B. SHELLEDY,
U. S. marshal for the district of Iowa.
By JESSE M. HARRISON, *Deputy.*

Marshal's mileage, hundred and ten miles, at five cents per mile, $11 00; serving citation $2 00; return 50 cents.

(Copy.)

Know all men by these presents, That I, William W. Corcoran, am held and firmly bound unto Patrick Molony in the full and just sum of two hundred dollars, to be paid to the said Patrick Molony, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents. Sealed with my seal, and dated this 29th day of May, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas lately at a district court of the United States for the district of Iowa, in a suit depending in said court, between Henry Chouteau, plaintiff, and Patrick Molony, defendant, judgment was rendered against the said Henry Chouteau, and the said Henry Chouteau having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Patrick Molony, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such, that if the said Henry Chouteau shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

W. W. CORCORAN. [SEAL.]

Sealed and delivered in presence of—
D. W. MIDDLETON.

Approved by JNO. CATRON,
Associate Justice Supreme Court U. S.

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the Judge of the [L. S.] district court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between Henry Chouteau, plaintiff, and Patrick Molony, defendant, a manifest error hath happened, to the great damage of the said Henry Chouteau, as by his complaint appears.

We are willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct their error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable R. B. Taney, chief justice of the said Supreme Court, this —— of ——, in the year of our Lord one thousand eight hundred and fifty-two. WM. THOS. CARROLL,

Clerk of the Supreme Court of the United States.

Allowed by JNO. CATRON,

Associate Justice Supreme Court U. S.

Assignment of error.

HENRY CHOUTEAU
vs.
PATRICK MOLONY.

In the Supreme Court of the United States, December term, 1852.

And now comes the plaintiff in error by Reverdy Johnson, and T. R. Cornick, his attorneys, and assigns the following error in the judgment of the district court of the United States, within and for the district of Iowa, to wit:

1. The said district court erred in deciding that the said petition of the said Henry Chouteau, and the matters therein contained, were not sufficient in law to maintain the said action of the said Henry Chouteau.

2. The said district court erred in rendering judgment in favor of the said Patrick Molony against the said Henry Chouteau.

Attest: REVERDY JOHNSON,
T. R. CORNICK,

Attorneys for Henry Chouteau, plaintiff in error.

The said defendant says there is no error in the record and proceeding of this case. PLATT SMITH,

Attorney for defendant.

Agreement of counsel.

HENRY CHOUTEAU
vs.
PATRICK MOLONY.

Supreme Court of the United States.

The undersigned, counsel for plaintiff and defendant, in the case of

Henry Chouteau against Patrick Molony, pending in said court, on writ of error out of said court to the United States district court, in and for the district of Iowa, agree as follows:

1. The record shall be considered as distinctly stating that the declaration filed in the court below was withdrawn prior to the filing of the petition, for such was the case.

2. The interest in the land sued for by the plaintiff in said suit shall be considered as worth upwards of two thousand dollars, for it is really worth more than that sum.

3. The plaintiff in error will not insist or ask that the court shall be concluded by the various translations of French and Spanish documents averred in said petition; but that the question whether any or all of said translations are correct, shall be considered an open question if the court choose so to consider it.

REVERDY JOHNSON,
TULLY R. CORNICK,
For plaintiff in error.

PLATT SMITH,
Attorney for defendant.

Washington, 17 *Dec.*, 1852.